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MAHAVIR SINGH v. STATE OF HARYANA

SUPREME COURT, INDIA
(2014) 6 SUPREME COURT CASES 716
DR BS CHAUHAN J
DR AK SIKRI J
B [CRIMINAL APPEAL NO: 2231 OF 2010†]
23 MAY 2014

CRIMINAL LAW: *Penal Code, 1860 – Sections 302, 120-B and 201 – Conspiracy to murder husband of one S, who had illicit relationship with J, co-conspirator with* C *appellant who had a grudge against deceased over marriage of S with deceased – Circumstantial evidence – Chain of – Found complete with no link missing – That accused had opportunity to commit murder, established – No material contradictions present – Conviction of appellant confirmed*

D PW 13, brother of deceased victim, alleged that deceased went missing and that his dead body was found after about five days, floating in a canal – Allegedly, J (co-accused) had illicit relationship with S (wife of deceased) – Appellant-accused also had a grudge on account of marriage of S with deceased and there had also been incident of "maar-peet" between them and some cases were also pending – S was also involved and all of them had E conspired to eliminate deceased – Thus, investigation revealed that deceased was killed by appellant and J, at the instance of S, and dead body was thrown away in canal – Trial court acquitted S, but convicted appellant and J under Ss. 302, 120-B and 201 IPC, which was affirmed by High Court

F Held, there is ample evidence on record that appellant and co-accused had been last seen along with deceased – Dead body of deceased was recovered after several days and post-mortem was conducted after about a week – However, PW 1 (doctor) opined that deceased was murdered one week prior to date of post-mortem – It is evident that deceased was done away in close proximity of time of being last seen with accused – None of the accused G could furnish any explanation in their statement under S. 313 CrPC, as to where did they dropped deceased or where he had gone – As per medical report, there were various grievous injuries on the neck and scalp of deceased and there also were multiple fractures on skull of deceased – As per disclosure statement of co-accused and appellant, the recovered material H contained chappal of deceased, bloodstained shirt and pants of appellant, which were found in a polythene under the bridge – Said clothes were sent for FSL, and as per report, it contained human blood – Blood was also found on hexa blade, frame of saw and traces of blood were also found on pants

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† From the Judgment and Order dated 20-1-2010 in Crl. A. No. 499-DB of 2001 of the High Court of Punjab and Haryana at Chandigarh

recovered at the instance of appellant – No material contradictions were present – Minor discrepancies are bound to occur in every case – Hence, the chain of circumstantial evidence is complete and no link is missing and accused persons had opportunity to commit murder of deceased – Both courts below, after appreciating evidence on record, rightly held appellant guilty of offences – Therefore, conviction of appellant, confirmed – Criminal Procedure Code, 1973 – S. 313 – Evidence Act, 1872, S. 27

(Paras 9 to 18)

Shankar v. State of Karnataka, (2011) 6 SCC 279 : (2011) 2 SCC (Cri) 915;
State of Rajasthan v. Rajendra Singh, (2009) 11 SCC 106 : 1998 SCC (Cri) 1605;
State v. Saravanan, (2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580;
Arumugam v. State, (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130;
Mahendra Pratap Singh v. State of U.P., (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352;
Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639;
State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216;
Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923;
Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375, relied on
Mahavir Singh v. State of Haryana, Criminal Appeal No. 499-DB of 2001, decided on 20 1 2010 (P&H), affirmed

CRIMINAL PROCEDURE: *Criminal Trial – Circumstantial evidence – Last seen together – Theory of – When comes into play – Murder trial – Held, it normally comes into play only in a case where time-gap between point of time when accused and deceased were seen alive and when deceased was found dead, is small – When said time-gap is very small, there may not be any possibility that any person other than accused, may be the author of crime – Herein, examining medical report minutely, it becomes evident that deceased was murdered one week prior to post mortem which was in close proximity to time when deceased was last seen alive with appellant-accused and co-accused – Conviction of appellant, confirmed – Penal Code, 1860, Ss. 302, 120 B and 201*

EVIDENCE: *Criminal Trial – Examination – Cross examination – Question not put to witness in cross-examination – Effect of – Held, in case question is not put to witness in cross-examination who could have furnished explanation on a particular issue, correctness or legality of said fact/issue cannot later be raised – Evidence Act, 1872, Ss. 155 to 157 and 146*

Atluri Brahmanandam v. Anne Sai Bapuji, (2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644;
Laxmibai v. Bhagwantbuva, (2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480, relied on

Appeal dismissed Y-D/53268/CR

Advocates who appeared in this case:

Sanjay Sharawat and Balraj S. Malik, Advocates, for the Appellant; Ms Nupur Choudhary, Samir Ali Khan and Sanjay Jain, Advocates, for the Respondent.

A **Chronological list of cases cited on page(s)**

(2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480, Laxmibai v. Bhagwantbuva
(2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923, Brahm Swaroop v. State of U.P.
(2011) 6 SCC 279 : (2011) 2 SCC (Cri) 915, A. Shankar v. State of Karnataka
(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216, State of U.P. v. Naresh
(2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644, Atluri Brahmanandam v. Anne Sai Bapuji
B *(2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375, Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*
(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639, Vijay v. State of M.P.
Criminal Appeal No. 499-DB of 2001, decided on 20-1-2010 (P&H), Mahavir Singh v. State of Haryana
C *(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352, Mahendra Pratap Singh v. State of U.P.*
(2009) 11 SCC 106 : 1998 SCC (Cri) 1605, State of Rajasthan v. Rajendra Singh
(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580, State v. Saravanan
(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130, Arumugam v. State

JUDGMENT

D **Dr BS Chauhan J:**

[1] This appeal has been preferred against the impugned judgment and order dated 20-1-2010, passed by the High Court of Punjab and Haryana at Chandigarh in *Mahavir Singh v. State of Haryana*[1], affirming the judgment and
E order of the learned Additional Sessions Judge, Panipat dated 4-9-2001/7-9-2001, passed in Sessions Trial No. 49 of 2000 by which and whereunder the appellant along with one Jagbir Singh stood convicted under Sections 302 and 120 B of the Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced to imprisonment for life and a fine of Rs 5000 each. They had
F further been convicted under Section 201 IPC and sentenced to undergo two years' RI and a fine of Rs 1000 each. In default of payment, to further undergo RI for six months.

[2] The facts and circumstances giving rise to this appeal are: that one Ram Chander (PW 13), brother of Suraj Mal (since deceased) alleged that his
G brother Suraj Mal was missing from 21-6-1995 and his dead body was found on 26-6-1995 floating in the canal after recovery of his chappal on the path to the canal near the bridge. Initially, the report in this respect was lodged on 25-6-1995 as a missing person by the mother of the deceased, namely, Smt Bharto Devi (PW 8) at Police Station Mathlauda, Panipat. On 28-6-1995, an
H FIR was lodged at 8 a.m. under Sections 302/201/120 B/34 IPC on the basis of the complaint made by Shri Ram Chander (PW 13), brother of the deceased along with one Balbir Singh who had also gone to search the deceased on a motorcycle and that on reaching the canal bridge of Kavi Village, they saw one chappal, one saw, two pieces of blade, some blood and two pieces of meat lying on the path and the dead body lying on the surface
I of the river.

1. Criminal Appeal No. 499-DB of 2001, decided on 20-1-2010 (P&H)

[3] Pursuant to the registration of the FIR, the matter was investigated and during investigation it is alleged that Jagbir Singh, co-accused had illicit relationship with Sudesh Rani (wife of the deceased) and the deceased's wife was also involved and all of them had conspired to remove the deceased from the way. The appellant also had a grudge on account of the marriage of Sudesh Rani with the deceased and there had also been incident of "maar-peet" between them and some cases are pending also. Thus, the investigation revealed that the deceased was killed on the intervening night of 21-6-1995/22-6-1995 by the appellant and Jagbir Singh, co-accused at the instance of Sudesh Rani and threw away the dead body in the canal.

[4] After conclusion of the investigation, a charge-sheet was filed under Sections 302/201/120 B IPC against the appellant, Jagbir Singh, co-accused and Sudesh Rani. The proceedings were committed to the Sessions Court and charges were framed *vide* order dated 17-1-1996. To prove its case, the prosecution examined 15 witnesses and on conclusion of the trial, the learned Sessions Judge, Panipat convicted the appellant along with Jagbir Singh, co-accused for the offences referred to hereinabove and sentenced them accordingly. However, Sudesh Rani was acquitted of all the charges.

[5] Aggrieved, the appellant filed Criminal Appeal No. 499-DB of 2001 before the High Court while Jagbir Singh, co-accused filed Criminal Appeal No. 520-DB of 2001. Both the appellants were heard together and their appeals had been dismissed by way of impugned judgment and order[1]. Hence, this appeal.

[6] So far as co-accused Jagbir Singh is concerned, he has filed separate appeal in this Court i.e. Criminal Appeal No. 2232 of 2010, but his advocate refused to argue the case. So we have adjourned the matter to be heard in ordinary course. In such a fact situation, the appeal of Mahavir Singh, appellant is heard.

[7] Shri Sanjay Sharawat, learned counsel appearing for the appellant has submitted that there could be no motive for committing the offence so far as the appellant is concerned. It was alleged that co-accused Jagbir Singh has developed illicit relations with the wife of the deceased. The courts below committed an error in applying the last seen theory. There is evidence on record to the extent that the appellant and Jagbir Singh, co-accused had been in the company of the deceased on 21-6-1995, but the missing person report was lodged on 25-6-1995, and an FIR had been lodged at a subsequent stage i.e. on 27-6-1995. When there is such a long gap in the last seen and the recovery of the dead body, such a doctrine has no application whatsoever. The recovery of the clothes of the appellant as well as other incriminating material had not been proved in accordance with law. No independent witness had been examined. Therefore, the appeal deserves to be allowed.

1 *Mahavir Singh v. State of Haryana*, Criminal Appeal No. 499-DB of 2001, decided on 20-1-2010 (P&H)

A **[8]** Per contra, Ms Nupur Choudhary, learned counsel for the respondent has opposed the appeal contending that there was sufficient motive on the part of the appellant also as the appellant's family was not happy with the marriage of Sudesh Rani with the deceased as she belonged to their original village and earlier there had been criminal case between the parties wherein B the appellant had thrashed the family of the deceased. As far as the question of missing independent witness is concerned, no question has been put to the investigating officer in this regard. Had such an issue been raised he ought to have furnished some explanation. Not only the recovery of incriminating material, but the clothes of the appellant had been recovered beneath the C canal bridge on the basis of disclosure statement made by the appellant himself. The concurrent findings recorded by the two courts below do not warrant any interference. Thus, the appeal is liable to be dismissed.

[9] We have considered the rival submissions made by the learned counsel for the parties and perused the record. There is ample evidence on D record and particularly the deposition of Jai Singh (PW 6) that the appellant and Jagbir Singh, co-accused had been last seen along with the deceased on 21-6-1995. The dead body was recovered after several days and post-mortem was conducted after about a week. However, Dr P.K. Dhaliwal (PW 1) had opined that the deceased was murdered one week prior to conducting the E post-mortem. We do not see any reason to disbelieve the said opinion. In such a fact situation, it is evident that the deceased had been done away in close proximity of time of last seen. None of the accused could furnish any explanation in their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") as where did they drop him or where he had gone. In fact, Bharto Devi (PW 8), mother of deceased F had deposed that one Nafe Singh (PW 9) had last seen the deceased with the appellant and Jagbir Singh, co-accused on 21-6-1995. Nafe Singh (PW 9) was a family member of the deceased's family and he had informed Bharto Devi (PW 8) that the deceased was seen with them. Mahavir Singh, appellant and his younger brother had assaulted Suraj Mal, deceased with a lathi and a G matter was reported to the police. She has further deposed about the illicit relation between her daughter-in-law and Jagbir Singh, co-accused. The actual narration about the last seen as per Bharto Devi (PW 8) had been that Suraj Mal (deceased) had gone with Nafe Singh (PW 9) for irrigating the agricultural land, however, he returned alone. On being asked by Bharto H Devi (PW 8), Nafe Singh (PW 9) replied that Suraj Mal (the deceased) had been talking with Jagbir Singh and Mahavir Singh at the outskirt of the village and in the morning when the deceased did not return, she called Jagbir Singh and she was told by him that there was strike and Suraj Mal was taken away by the police along with others, so, it may take some time for I him to come back.

[10] As per the medical report, there were various grievous injuries on the neck and scalp of the deceased. There were multiple fractures on the skull of the body of the deceased.

[11] So far as the recovery is concerned, it was made *vide* Ext. PM, Ext. PN, Ext. PQ, Ext. PR and in the presence of the witnesses. At the disclosure statement of the co-accused, Jagbir Singh and the appellant the recovered material also contained the chappal of the deceased, bloodstained shirt and pants of the appellant which were found in a polythene under the bridge in Bhusalana Road on 3-7-1995. Again in Ext. PL there was another recovery memo of bloodstained clothes of Mahavir Singh hidden up near the village in a pulia which had been recovered on his own disclosure statement. The said clothes were sent for FSL and as per the report it contained human blood. Blood was also found on hexa blade, frame of aari (saw) and traces of blood were also found on the pants recovered at the instance of the appellant.

[12] Undoubtedly, it is a settled legal proposition that the last seen theory comes into play only in a case where the time-gap between the point of time when the accused and the deceased were seen alive and when the deceased was found dead (*sic* is small). Since the gap is very small there may not be any possibility that any person other than the accused may be the author of the crime. In the instant case, if we examine the medical report minutely, it becomes evident that the deceased Suraj Mal had been murdered one week prior to the post-mortem. Thus, it becomes evident that he had been killed in a very proximity of time when the deceased was seen alive with the appellant and Jagbir Singh, co-accused.

[13] It has been pointed out that there had been some discrepancies in the inquest report as well as in the depositions of the witnesses. However, no material contradictions could be brought to our notice. Minor discrepancies are bound to occur in every case. This Court in *A. Shankar v. State of Karnataka*[2] held: (SCC pp. 286-87, paras 22-24)

> 22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

2. (2011) 6 SCC 279 : (2011) 2 SCC (Cri) 915 : AIR 2011 SC 2302

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> 23. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. 'Exaggerations *per se* do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.' Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. 'Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.' The omissions which amount to contradictions in material particulars i.e. materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. …
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> 24. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.
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> (emphasis in original)
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> (See also *State of Rajasthan v. Rajendra Singh*[3], *State v. Saravanan*[4], *Arumugam v. State*[5], *Mahendra Pratap Singh v. State of U.P.*[6], *Vijay v. State of M.P.*[7], *State of U.P. v. Naresh*[8], *Brahm Swaroop v. State of U.P.*[9] and *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*[10].)

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[14] In view of the above, we do not see any force in the submissions so advanced on behalf of the appellant.

[15] A large number of issues have been raised by the learned counsel for the appellant particularly that independent witness had not been examined. Various issues have been raised regarding recovery of clothes of Suraj Mal, recovery of V-shaped chappals, serious discrepancies in the inquest report and recovery of the clothes of the appellant. In the trial court, no question had been put to Ramphal (PW 15), the investigating officer or Lakhpal Singh (PW 11), ASI or any other material witness who could furnish explanation for such discrepancies.

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3. (2009) 11 SCC 106 : 1998 SCC (Cri) 1605
4. (2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152
5. (2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130
6. (2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352
7. (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639
8. (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216
9. (2011) 6 SCC 288 : (2011) 2 SCC (Cri) 923 : AIR 2011 SC 280
10. (2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375

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[16] It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (*Vide Atluri Brahmanandam v. Anne Sai Bapuji*[11] and *Laxmibai v. Bhagwantbuva*[12].)

[17] In the instant case, we had gone through the cross-examination of the witnesses who could furnish an explanation for the discrepancies pointed out by the learned counsel for the appellant. However, we came to the conclusion that the defence had never put any question in these regards to the material witness who could furnish the explanation for the same. So the chain of all the circumstantial evidence is complete and no link is missing and the accused persons had an opportunity to commit the murder of the deceased.

[18] Both the courts below after appreciating the evidence on record held the appellant guilty of the offences. In view of the above, the appeal is devoid of merit and it is accordingly dismissed.

11. (2010) 14 SCC 466 : (2012) 1 SCC (Civ) 644 : AIR 2011 SC 545
12. (2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204